

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**LOYAL ORDER OF MOOSE LODGE NO. 1352
DOCKET NO. 29-20010329**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DEPARTMENTAL ORDER**

An administrative hearing was held on Tuesday, May 21, 2002 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, an Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

The Petitioner, Loyal Order of Moose Lodge No.1352, was represented by Steven G. Hedges, Attorney at Law, P.O. Box 185, Mt. Summit, Indiana 47361. Attorney Steve Carpenter, appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-1, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Departmental Order.

REASON FOR HEARING

On December 13, 2001, the Petitioner was assessed civil penalties in the amount of thirteen thousand five hundred dollars (\$13,500) as a result of violations of IC 4-32 et.seq. discovered during a Departmental investigation. The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC § 4-32-8-1.

SUMMARY OF FACTS

- 1) The Indiana Department of Revenue Criminal Investigation Division initiated an investigation of the Loyal Order of Moose Lodge No. 1352.
- 2) The Department's Criminal Investigation Division report regarding the Loyal Order of Moose Lodge No. 1352 determined that the Petitioner conducted the sale of punchboards, pulltabs, and tipboards without a license from December 1, 1997 to November 30, 2000 in violation of IC 4-32-9-2.
- 3) Petitioner allegedly failed to keep accurate records in violation of IC 4-32-9-17.
- 4) On December 13, 2001, the Department assessed Petitioner civil penalties in the amount of thirteen thousand five hundred dollars (\$13, 500).

- 5) At hearing, the Petitioner stipulated to the fact that they did conduct gaming without a license.
- 6) The Petitioner argues that a member of its organization that allegedly embezzled money, and did not procure an annual gaming license ran their gaming.
- 7) Petitioner contends that the failure to obtain a license is not the organization's fault, but that of the former member.
- 8) As a result of the organization being deceived by one of its members, the Petitioner argues that it should be allowed to file its past gaming applications retroactively, and pay a one dollar (\$1.00) civil penalty for each year's violation, thus eliminating all but three dollars (\$3.00) of the civil penalties imposed by the Department and also any related tax implications.
- 9) Petitioner also argues that it should only be required to pay a \$1.00 fine for its failure to keep accurate records.

FINDINGS OF FACTS

- 1) The Indiana Department of Revenue Criminal Investigation Division initiated an investigation of the Loyal Order of Moose Lodge No. 1352. (Record at 10).
- 2) On April 12, 2001, the Department's investigator met with Barb Polson the Petitioner's administrative assistant and Jim Hudson Petitioner's Government Relations Chairman. (Record at 11).
- 3) Ms. Polson and Mr. Hudson acknowledged that the Petitioner sold punchboards, pulltabs, and tipboards without a license for a period of three years. (Record at 11).
- 4) Ms. Polson and Mr. Hudson also told the Department that no records had been kept of the organization's proceeds from the illegal gambling. (Record at 12).
- 5) The Department's letter dated December 13, 2001 regarding the Loyal Order of Moose Lodge No. 1352 found that the organization had violated the following statutes, IC 4-32-9-2 and IC 4-32-9-17.
- 6) On December 13, 2001, the Department assessed Petitioner civil penalties in the amount of thirteen thousand five hundred dollars (\$13, 500).
- 7) The Petitioner's Attorney stipulated that they did operate charity gaming for a period of three (3) years without a charity game license. (Record at 9).
- 8) Petitioner alleged that Mr. Hummer, a former administrator of its organization, is responsible for the failure to obtain a gaming license from the Department. (Record at 24).
- 9) Petitioner contends that Mr. Hummer also embezzled all gaming monies. (Record at 24).
- 10) Petitioner's witness also stated, "I kind of blame the officers for part of this because they didn't check to make sure they (the organization's bills) had been paid." (Record at 25).
- 11) Petitioner did not contact any law enforcement agency regarding the allegedly stolen money. Petitioner's witness stated when asked about whether they reported the money missing, "We were told that we should just report it to

Moose International, and they'd take it to their bonding company." (Record at 29).

- 12) Petitioner's counsel stated that Petitioner's insurance carrier paid them approximately eleven thousand dollars (\$11,000) as a result of a bond to cover Mr. Hummer's actions. (Record at. 17).

STATEMENT OF LAW

- 1) Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).
- 2) The Department's administrative hearings are conducted pursuant to IC § 6-8.1-5-1 et seq. (See, Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993)).
- 3) Pursuant to 45 IAC 15-5-3(b)(7), "The hearing is not governed by any rules of evidence. The department is expressly excluded from the requirements of the Administrative Adjudication Act.(renamed the Administrative Order and Procedures Act)."
- 4) Even if the Department were bound by the Administrative Orders and Procedures Act (AOPA), the rules clearly state that hearsay evidence that is properly objected to and does not fall with an exception to the hearsay rule may not form the sole basis of a resulting order. The AOPA does not say that the evidence cannot be heard, presented, or considered.
- 5) IC 4-32-9-2 states, "Except as provided in section 3 of this chapter, a qualified organization must obtain a license from the department to conduct an allowable event."
- 6) IC 4-32-9-17 states, "A qualified organization shall maintain accurate records of all financial aspects of an allowable event under this article..."
- 7) IC 4-32-8-1 states, "IC 6-8.1 applies to the Department's decision making process under this article."
- 8) IC 6-8.1-2-1 provides, "The department of state revenue is established as an agency of the state of Indiana for the purpose of administering, collecting, and enforcing the taxes placed under its authority."

CONCLUSIONS OF LAW

- 1) The Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made.
- 2) The Petitioner sold pulltabs, tipboards and punchboards from December 1, 1997 to May of 2000 without a charity game license in violation of IC 4-32-9-2.
- 3) Petitioner did not keep any records of its gaming activities in violation of IC 4-32-9-17.

- 4) Based upon Indiana law governing the administrative hearing process, the Commissioner or his designee cannot act as a court of equity to overturn a statutorily imposed civil fine based upon a stipulated violation of Indiana law and the totality of the circumstances involved.

DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner's protest is denied.

- 1) Under IC 6-8.1-5-1, the organization may request a rehearing. However, rehearings are granted only under unusual circumstances. Such circumstances are typically the existence of facts not previously known that would have caused a different result if submitted prior to issuance of the Departmental Order.
- 2) A request for rehearing shall be made within seventy-two (72) hours from the issue date of the Departmental Order and should be sent to the Indiana Department of Revenue, Legal Division, Appeals Protest Review Board, P.O. Box 1104, Indianapolis, Indiana 46206-1104.
- 3) Upon receipt of the request for rehearing, the Department will review the respective file and the rehearing request to determine if sufficient new information has been presented to warrant a rehearing.
- 4) The Department will then notify the organization in writing whether or not a rehearing has been granted. In the event a rehearing is granted, the organization will be contacted to set a rehearing date.
- 5) If the request for rehearing is denied or a request is not made, all administrative remedies will have been exhausted. The organization may then appeal the decision of the Department to the Court of proper jurisdiction.

THIS ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN SEVENTY-TWO (72) HOURS FROM THE DATE THE ORDER IS ISSUED.

Dated: _____

Bruce R. Kolb / Administrative Law Judge